



1957

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Recommended Citation

Godfrey P. Schmidt, *Strikes, Picketing and the Law*, 3 Vill. L. Rev. 37 (1957).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol3/iss1/3>

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STRIKES, PICKETING AND THE LAW *

GODFREY P. SCHMIDT †

INDUSTRIAL peace is a subject which, like so many others in the field of labor relations, develops many differences of opinion. It is characteristic of these differences that people addressing you from this podium will differ. I agree, however, that the newspapers and the channels of information, generally speaking, emphasize what is wrong, what is sensational, rather than the ordinary and commonplace in peaceful and orderly negotiations and relationships. However, that is natural since the rogues and the fools in any civilization have always been a minority. It is not all bankers who are corrupt and who invite legislative relief for those who are depositors. It is a relatively few corrupt bankers. And the same is true with business men and insurance, etc.

This proposition is especially exemplified by the revelations of the present McClellan committee. We are advancing legislatively, despite the fact that none of us like law for the sake of law, because we recognize that law is only the means to an end. It is always, it seems to me, a mark of civilization, that we elucidate and isolate standards of human conduct which can be put in the form of some legal standard in order to guide us in troubled areas. The area of industrial relations has been an area that, generally speaking, has been left without an adequate jurisprudence. I believe that there is a reason for this situation. The reason is that in a growing society like ours, in the development of standards, we have lacked the necessary know-how; we needed to accumulate a certain amount of information and experience. Today we have enough information and experience to divide labor problems into two main classes, after the pattern fixed by the Supreme Court of the United States in its handling of *political questions*, on the one hand, and *justiciable issues*, on the other. I submit that issues in labor relations, such as: did Jones say this?—what are the facts?—what does the contract mean?—what does the law provide?—which union has the majority?—does this union

* A paper delivered at the School of Law, Villanova University, April 26, 1957 as part of a symposium on "Industrial Peace" held on the occasion of the dedication of Garey Hall, the Law School building.

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represent the workers in the bargaining unit?—are, by every decent standard of law and order, *justiciable issues*. By that I am not suggesting that they should be remanded to courts for handling. But I do suggest that there is a better way for handling them than by committing them to the tender mercies of strifing parties. Nothing can be gained toward the settlement of issues of that type, by picketing, by strikes, and by lock-outs. This follows from a standard that practically every one of our moral theology manuals reiterates, which manuals, incidentally, give us very little in the way of standards for industrial relations. Almost every Latin or English moral theology manual does say that a strike, like other warfare, must be a *last* recourse. And often it is. Sometimes it cannot be, simply because there is no machinery available to the union to redress a particular grievance. But I submit that there ought to be the kind of legal standard that would settle this type of justiciable issue—grievances between parties. I can recall that Harvey Collison, the coal mines administrator, had an altercation with John L. Lewis, about this question: when, according to the contract, does this contract end? Instead of settling the question by some arbitration procedure, or by some court procedure or by some procedure of administrative tribunals, they settled it by a strike that practically put the economics of this country into a tailspin for several weeks. I submit that this is a completely incommensurable way of dealing with such a problem. It is not suggested that there are not many other problems which cannot be dealt with in this way. This is admitted.

The other type of problem is what the United States Supreme Court would call a “political problem,” and what we would call, perhaps, a “legislative problem.” This problem would involve questions such as—how much of a wage increase should be granted—what kind of a pension plan is suitable—what kind of a welfare plan is necessary. There is no pre-existing standard to aid us. You cannot go to a law book or a case book, and say here is the standard. The solution is to work out the standard legislatively, in the sub-legislation which is always involved in collective bargaining. There, I do not believe we can ever have any compulsory process without regimentation, without dictation of wages, prices, union policies, and business policies. I would deprecate that strongly.

But I suggest that a large area of strife in the field of industrial relations could be passified, if our legislators, particularly, had enough courage in dealing with both union and management, and in imposing the peaceful and orderly solution of justiciable issues.

Consider this quotation that you use from St. Augustine, "Law—the foundation of an ordered peace. Peace is the tranquility of order." What I have been saying is nothing but an application of what St. Augustine said centuries ago, and what St. Thomas Aquinas expressed. In the whole tradition of the Scholastics there has been an emphasis upon the use of legal standards where significant evils were to be corrected. No one can look at the modern industrial scene, without realizing that we do have significant evils to be corrected. There is only one problem which is larger, in a sense, than the industrial problem, and that is the problem of international peace.